

SEP 4 1997

CLERK

In The  
**Supreme Court of the United States**

October Term, 1996

CASS COUNTY, MINNESOTA; SHARON K.  
ANDERSON, in her official capacity as Cass County  
Auditor; MARGE L. DANIELS, in her official capacity  
as Cass County Treasurer; STEVE KUHA, in his official  
capacity as Cass County Assessor; JAMES DEMGEN,  
in his official capacity as Cass County Commissioner;  
JOHN STRANNE, in his official capacity as Cass County  
Commissioner; GLEN WITHAM, in his official capacity  
as Cass County Commissioner; ERWIN OSTLUND, in  
his official capacity as Cass County Commissioner;  
VIRGIL FOSTER, in his official capacity as  
Cass County Commissioner,

*Petitioners,*

v.

LEECH LAKE BAND OF CHIPPEWA INDIANS,

*Respondent.*

On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eighth Circuit

**PETITIONERS' REPLY BRIEF**

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## PETITIONERS' REPLY BRIEF

Petitioners<sup>1</sup> ("Cass County" or "the County") respectfully submit this Reply Brief in response to the Brief in Opposition filed by Respondent Leech Lake Band of Chippewa Indians ("the Band").

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 ARGUMENT

**THE BAND'S STATEMENT IN ITS BRIEF IN OPPOSITION THAT THE LAND PARCELS AT ISSUE IN THE LUMMI CASE WERE ORIGINALLY ALLOTTED TO INDIVIDUAL INDIANS UNDER THE GENERAL ALLOTMENT ACT IS INCORRECT.**

The sole purpose of this Reply Brief is to correct a misstatement of fact appearing in the Band's Brief in Opposition to Cass County's Petition for Writ of Certiorari. In so doing, the County does not intend to reargue any matters which are in dispute between the parties.

In contending that there really is not a split among the Sixth, Eighth, and Ninth Circuits on the issue of whether tribal land is subject to state and local taxation by reason of its free alienability, the Band states with respect to the decision in *Lummi Indian Tribe v. Whatcom County, Washington*, 5 F.3d 1355 (9th Cir. 1993), cert. denied, 114 S. Ct. 2727 (1994), that:

In one important respect, the *Lummi* holding [in favor of taxability] is not even at odds with the holding of the Court of Appeals in the

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<sup>1</sup> The Petitioners include Cass County, Minnesota, and eight county officials.

instant case. In *Lummi*, all of the disputed parcels originally were allotted to individual Indians pursuant to the General Allotment Act of 1887, and became fee property in much the same way as the land at issue in *Yakima*.

Brief in Opposition at 5. This statement is incorrect.

Rather than being allotted pursuant to the General Allotment Act, the land at issue in *Lummi* was originally allotted to individual Indians in 1884 (three years before the General Allotment Act) under the Treaty of Point Elliott. *Lummi*, 5 F.3d at 1356-57. Furthermore, one of the asserted grounds for the Lummi Tribe's claim that its land was not subject to taxation was the very fact that it had been allotted "under the Treaty of Point Elliott rather than the General Allotment Act, which permits such taxation." *Id.* at 1356.

Thus, contrary to the Band's assertion, there is a conflict among the circuits with respect to the issue in this case. The Ninth Circuit has held that tribally owned land, if freely alienable, is subject to state and local taxation no matter how it became patented; while the Sixth and Eighth Circuits have held that such land becomes taxable only by reason of the Burke Act amendment to section 6 of the General Allotment Act.

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### CONCLUSION

The *Lummi* decision, holding that tribally owned land originally allotted to individual Indians under a treaty is subject to ad valorem taxation, clearly is in direct conflict with the decision in this case holding that the Burke Act

amendment to section 6 of the General Allotment Act is a prerequisite to the taxability of such land.

Dated: September 4, 1997

Respectfully submitted,  
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